

Service Date: January 21, 2020

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

ILIAD WATER COMPANY,
LLC,

Respondent.

DOCKET UW-190613

ORDER 01

INITIAL ORDER APPROVING
SETTLEMENT AGREEMENT

BACKGROUND

- 1 October 16, 2019, the Washington Utilities and Transportation Commission (Commission) through its regulatory staff (Staff)¹ issued a Complaint Seeking to Impose Penalties and Notice of Hearing (Complaint) against Iliad Water Company, LLC, (Iliad Water or Company) for alleged violations of Title 80 RCW and Chapter 480-110 WAC. The Complaint gave notice to all parties that the Commission would hear this matter on January 2, 2020, at 9:30 a.m.
- 2 On December 20, 2019, Staff notified the presiding officer that the parties had reached a settlement in principle and requested that the procedural schedule be suspended to allow the parties sufficient time to memorialize the terms of their agreement.
- 3 On December 23, 2019, the Commission issued a Notice Canceling Hearing and Requiring Filing of Settlement Documents or Status Report by January 17, 2020 (Notice).
- 4 On January 17, 2020, Staff, Iliad Water, and the Public Counsel Unit of the Attorney General's Office (Public Counsel) (collectively, the Parties) filed with the Commission

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

a Settlement Agreement and Joint Narrative Supporting Settlement Agreement. The Parties assert that the Settlement Agreement resolves all issues in this Docket.

- 5 As part of the Settlement Agreement, Iliad Water admits to the 2,824 violations of RCW 80.28.080 and WAC 480-110-355 described in the Complaint. The Parties agree that Iliad Water will refund to impacted customers a total of \$3,859.50, as described in the Complaint, and provide proof to Staff and Public Counsel of all refunds made.
- 6 The Parties agree that the Commission should impose a \$28,240 penalty, a \$22,640 portion of which should be suspended for a period of two years, and then waived, subject to the condition that Iliad Water refrains from committing repeat violations of those types described in the Complaint. The Parties agree that the suspended penalty will become immediately due and payable if Iliad Water commits a repeat violation.
- 7 The Parties further agree that Iliad Water should pay a \$5,600 portion of the penalty according to the terms of a mutually acceptable payment arrangement, which the Company will file with the Commission for approval within 30 days of the date of this Order. Staff agrees it will not pursue any further enforcement action related to or arising from the allegations set forth in the Complaint.
- 8 Finally, the Parties agree that Iliad Water will work with Staff and Public Counsel to develop a compliance plan, which will be filed in this Docket within 30 days of the date of this Order.
- 9 Nash Callaghan, Assistant Attorney General, Lacey, Washington, represents Staff. Richard Finnigan, Law Office of Richard A. Finnigan, Olympia, Washington, represents Iliad Water. Ann Paisner, Assistant Attorney General, Seattle, Washington, represents Public Counsel.

DISCUSSION AND DECISION

- 10 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.

- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

11 We approve the Settlement Agreement without condition. The Parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Iliad Water admits that its conduct violated RCW 80.28.080 and WAC 480-110-355. The Company also agrees to refund all of the customer overcharges that resulted from these violations. The \$28,240 penalty, \$22,640 of which is suspended, is reasonable, both in terms of the \$5,600 penalty the Company must pay now, and the suspended amount it must pay if it fails to comply with the Order.

12 The terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. First, the Settlement Agreement supports the Commission's ultimate goal of increasing compliance by permitting Iliad Water to pay a reduced penalty contingent on the Company refraining from incurring repeat violations for the next two years. In addition, the required compliance plan, which the Company will develop with assistance from both Staff and Public Counsel, will increase the Company's likelihood of success. Finally, customers impacted by the violations will be made whole under the terms of the Settlement Agreement. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

13 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.

- 14 (2) Iliad Water Company, LLC, must refund to its customers \$3,859.50, as outlined in the Complaint, and must provide to Commission Staff and Public Counsel proof of all refunds made.
- 15 (3) The Commission imposes a \$28,240 penalty, a \$22,640 portion of which is suspended for a period of two years from the effective date of this Order, and waived thereafter, subject to the condition that Iliad Water Company, LLC, does not commit any repeat violations of the types identified in the Complaint.
- 16 (4) Iliad Water Company, LLC, must pay the \$5,600 portion of the penalty that is not suspended according to the terms of a mutually acceptable payment arrangement, which will be submitted to the Commission for approval within 30 days of the effective date of this Order.
- 17 (5) Iliad Water Company, LLC, must work with Commission Staff and Public Counsel to develop a compliance plan, which must be filed in this Docket within 30 days of the effective date of this Order.
- 18 (6) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective January 21, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable with due diligence at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-825(1) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).

Exhibit A

(Settlement Agreement)